IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WP(C).No. 30790 of 2006(M)

PETITIONER:

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1. MANNADI SNDP SAKHA YOGAM NO.169,
   MANNADI, ADOOR TALUK, REPRESENTED BY ITS SECRETARY
   C.PRAKASH.

2. SAKTHI BHADRAN PANDARATHIL,
   VAKKAVANJIPUZHA MADOM, MANNADI, ADOOR TALUK,
   PATHANAMTHITTA DISTRICT.

3. E. VASUDEVAN PANDARATHIL,
   VAKKAVANJIPUZHA MADOM, MANNADI, ADOOR TALUK,
   PATHANAMTHITTA DISTRICT.

4. E. LAKSHIDASAN PANDARATHIL,
   VAKKAVANJIPUZHA MADOM, MANNADI, ADOOR TALUK,
   PATHANAMTHITTA DISTRICT.

5. E. PARAMESWARAN PANDARATHIL,
   VAKKAVANJIPUZHA MADOM, MANNADI, ADOOR TALUK,
   PATHANAMTHITTA DISTRICT.

BY ADV. SRI.D.KISHORE

RESPONDENTS:

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1. THE SUB DIVISIONAL MAGISTRATE,
   ADOOR, PATHANAMTHITTA DISTRICT.

2. THE VILLAGE OFFICER,
   KADAMPANAD, PATHANAMTHITTA DISTRICT.

3. MANNADI MUDIPPURA DEVI KSHETRA-
   SAMRAKSHANA SAMITHY, P.205/2005,\EPRESENTED BY ITS
   SECRETARY G.MADHU, PANJAJANYAM HOUSE, MANNADIYIL,
   KALEYIKKU PADINJARU-KIZHAKKU MURI, KADAMPANADU
   VILLAGE, ADOOR, PATHANAMTHITTA DISTRICT.

ADDL.R4. SURENDRAN UNNITHAN, AGED 57,
S/O. NARAYANA KURUP, VELLAYIL PRASANTH BHAVAN
MANNADI P.O.
(IMPLEADED AS PER ORDER ON IA NO. 693/07 DT.25.1.2007)

R1 & 2 BY GOVERNMENT PLEADER SRI.P. RAVINDRA BABU
R3 BY ADV. SRI.M.NARENDRA KUMAR
R4 BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF RELEVANT EXTRACT OF THE PARTITION DEED NO. 151 DT.20.2.90

EXT.P2 TRUE COPY OF THE SETTLEMENT DEED DT. 11.7.05.

EXT.P3 TRUE COPY OF JUDGMENT DT.27.2.02 IN OP 5843/02.

EXT.P4 TRUE COPY OF THE FIR IN CRIME 431/05 OF ADOOR POLICE STATION DT.19.6.05.

EXT.P5 TRUE COPY OF COMPLAINT FILED BY 1ST PETITIONER TO THE DIRECTOR GENERAL OF POLICE ON 2.8.05.

EXT.P6 TRUE COPY OF PETITION FILED BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT DT.16.8.05.

EXT.P7 TRUE COPY OF THE ORDER IN IA 1295/05 IN OS 192/05 OF SUB COURT, PATHANAMTHITTA DT.28.1.06.

EXT.P8 TRUE COPY OF JUDGMENT DT.24.2.06 IN WPC 4809/06.

EXT.P9 TRUE COPY OF PROCEEDINGS DT.27.2.06 OF THE 1ST RESPONDENT.

EXT.P10 TRUE COPY OF THE REQUEST DT.13.7.06 SUBMITTED BY 1ST PETITIONER.

EXT.P11 TRUE COPY OF THE REQUEST DT.18.8.06 SUBMITTED BY DO.

EXT.P12 TRUE COPY OF REPRESENTATION DT.4.10.06 DO. BEFORE RDO.

EXT.P13 TRUE COPY OF PROCEEDINGS DT.20.10.06 OF THE 2ND RESPONDENT.

RESPONDENTS' EXTS:

EXT.R3(a) TRUE COPY OF DEED NO.1012 OF 1113 DT.21.7.05 OF SRO, KOLLAM.

EXT.R3(b) TRUE COPY OF NOTICE PUBLISHED ON 26.2.1969 BY THE THEN FESTIVAL COMMITTEE.

EXT.R3(c) TRUE COPY OF NOTICE PUBLISHED BY THE FESTIVAL COMMITTEE ON 17.2.1999.

EXT.R3(d) TRUE COPY OF THE PLAINT IN OS 192/05 OF SUB COURT, PATHANAMTHITTA.

EXT.R3(e) TRUE COPY OF REPORT FILED BY ADV. COMMISSIONER IN OS 190/05 COURT OF MUNSIFF, ADOOR.

EXT.R3(f) TRUE COPY OF PROGRAMME FOR THE FESTIVAL OF MUDIPPURA TEMPLE.

EXT.R3(g) TRUE COPY OF PHOTO HANDING OVER THE THALIYOLA TO THE PRESIDENT OF THE SAMITHY.

EXT.R3(h) TRUE COPY OF RECEIPT ISSUED BY THE 2ND RESPONDENT DT.28.2.06.

EXT.R3(i) TRUE COPY OF ATTENDANCE REGISTER DT. 30.12.06.

R. BASANT, J.

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W.P.C.No. 30790 of 2006 M

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Dated this the 25th day of January, 2007

JUDGMENT

The petitioners 2 to 5 claim to be representatives of a Madom. The first petitioner claims to be the transferee of certain rights from the said Madom. The disputes relate to the administration and possession of a temple known as Mannadi Mudippura Devi Temple. There is an ongoing dispute between the Madom and the S.D.N.P. Sakha Yogam together on the one side and the members of the public, who have now constituted themselves into a Samrakshana Samithi, the 3rd respondent herein, on the other.

2. This Court had issued Exts.P3 and P8 orders during some earlier years about the manner in which the festival etc. are to be conducted in the temple. On 27.2.2006 the Sub Divisional Magistrate appears to have passed an order under Section 145 Cr.P.C. and a simultaneous order under Section 146 Cr.P.C. It is unnecessary to advert to the details of Ext.P9. By Ext.P9 the proceedings under Section 145 Cr.P.C. were initiated and to avert the possible

apprehended consequences a Village Officer was appointed as Receiver and the Village Officer continues as Receiver even now.

3. The petitioners have come to this Court complaining that the proceedings initiated are not proper and that the Sub Divisional Magistrate is not properly discharging his obligations under Section 145 Cr.P.C. After having passed the composite order under Ext.P9, no further steps have been taken under Section 145 Cr.P.C. There has been gross disregard of the provisions of Section 145 Cr.P.C. No opportunity to file statements and enquiry as contemplated under Section 145 are being conducted. Attempts appear to have been made by the Sub Divisional Magistrate to bring about an amicable settlement. According to the petitioners, no such settlement has been reached. But the Sub Divisional Magistrate, ignoring the fact that no such settlement has been reached, is trying to close the proceedings and to put the third respondent and his representatives in possession. It is in these circumstances that the petitioners have come before this Court. The Sub Divisional Magistrate was directed to explain whether any further steps under Section 145 Cr.P.C. have been taken.

4. The third respondent has entered appearance. Additional 4th respondent has been impleaded. They contend that the third respondent is

entitled to be in possession of the temple and to manage and administer the temple. The impleaded 4th respondent contends that a civil suit has already been filed and the civil court is seized of the matter. There is of course a dispute as to whether the Receiver has already handed over possession to the third respondent or not. The Sub Divisional Magistrate explains to the Court that though the key has been handed over to the third respondent, that does not amount to handing over of possession or administration and management of the temple. According to him, in order to conduct poojas the keys were handed over. It will be taken back immediately. The Receiver has not been discharged nor has possession been handed over to any one, asserts the Sub Divisional Magistrate.

5. Having considered all the relevant inputs I am satisfied that this Writ Petition can be disposed of with appropriate directions.

6. The Crl.M.C. is thus allowed in part. The following directions are hence issued.

(1) The Sub Divisional Magistrate shall give all the contestants i.e., the petitioners and respondents 3 and 4 herein, an opportunity to appear before him and raise all relevant contentions. They will be entitled to raise all such contentions, including the contention that in view of the pendency

of the proceedings before the civil court, no order under Section 145 or 146 Cr.P.C. is liable to be passed. After considering all such contentions, an order under Section 145 Cr.P.C. will have to be passed by the Sub Divisional Magistrate.

(2) The Sub Divisional Magistrate shall continue to keep the property under attachment, subject to appropriate directions to be issued in the matter of conduct of poojas and festival. While taking decision on that aspect as also while passing orders under Section 145 Cr.P.C., the Sub Divisional Magistrate shall take into account the orders, if any, passed by the civil court and the proceedings pending before the civil court. The earlier orders passed by this Court vide Exts.P3 and P8 will also be taken into account while making interim arrangements regarding management and administration of the temple and conduct of poojas and festival.

(3) The parties shall appear before the Sub Divisional Magistrate without waiting for any further notice or orders on 2.2.2007. The Sub Divisional Magistrate shall proceed to pass appropriate final orders as expeditiously as possible, at any rate, before the date on which the festival is scheduled to be conducted.

Hand over copy of the judgment to the parties, including the Govt. Pleader.

(R. BASANT)
Judge

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